

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**B. P. J., by her next friend and mother,  
HEATHER JACKSON,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 2:21-cv-00316  
Judge Joseph R. Goodwin**

**WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY  
BOARD OF EDUCATION, WEST  
VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION,  
W. CLAYTON BURCH, in his official  
Capacity as State Superintendent, DORA  
STUTLER, in her official capacity as  
Harrison County Superintendent, and  
THE STATE OF WEST VIRGINIA,**

**Defendants.**

**and LAINEY ARMISTEAD,**

**Intervenor Defendant.**

**DEFENDANT STATE OF WEST VIRGINIA’S MOTION IN LIMINE TO EXCLUDE  
SEVERAL LEGISLATORS’ STATEMENTS (HEARSAY AND RELEVANCE)**

Defendant, State of West Virginia (the “State”), pursuant to Fed. R. Evid. 801 and 402, hereby respectfully moves for an order *in limine* to exclude certain legislators’ and others’ out-of-court statements because they are hearsay and irrelevant. Based on Plaintiff’s Memorandum in Support of Motion for Summary Judgment, the State of West Virginia expects Plaintiff to attempt to introduce statements of several state legislators and others in an effort to show that H.B. 3293 is the product of the Legislature’s animus, rather than for the legitimate reasons indicated in the law itself and further explained by the State in this case. These statements are out-of-court oral

statements, Facebook postings, or Facebook “likes.” They are hearsay without any valid exceptions. *See* Fed. R. Evid. 801. Further, they are not relevant to show the intent of the Legislature as a whole. *See* Fed. R. Evid. 402. The grounds for this Motion are more fully set forth in the Memorandum in Support below.

Therefore, the State respectfully requests that its Motion *in Limine* be granted.

Respectfully submitted,

PATRICK MORRISEY

*West Virginia Attorney General*

/s/ Curtis R. A. Capehart

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*Chief Deputy Attorney General*

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*Counsel for Defendant, STATE OF WEST VIRGINIA*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 22nd day of June 2022, I electronically filed the foregoing Motion with the Clerk of Court and all parties using the CM/ECF System.

/s/ Curtis R. A. Capehart  
Curtis R. A. Capehart